



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2020-0156; FRL-10008-17-Region 4]**

**Air Plan Approval; KY: Jefferson County Performance Tests**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve changes to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet), Division of Air Quality (DAQ), through a letter dated September 5, 2019. The changes were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District, also referred to herein as Jefferson County). The SIP revision includes changes to Jefferson County regulations regarding performance tests.

**DATES:** Comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2020-0156 at [www.regulations.gov](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a

written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit [www2.epa.gov/dockets/commenting-epa-dockets](http://www2.epa.gov/dockets/commenting-epa-dockets).

**FOR FURTHER INFORMATION CONTACT:** D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Akers can be reached via electronic mail at [akers.brad@epa.gov](mailto:akers.brad@epa.gov) or via telephone at (404) 562-9089.

## **SUPPLEMENTARY INFORMATION:**

### **I. What Action is EPA Proposing?**

EPA is proposing to approve changes to the Jefferson County portion of the Kentucky SIP that were provided to EPA through DAQ via a letter dated September 5, 2019.<sup>1</sup> EPA is proposing to approve the changes to Jefferson County's Regulation 1.04, *Performance Tests*.<sup>2</sup> The September 5, 2019, SIP revision first makes minor changes to Regulation 1.04 that do not

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<sup>1</sup> In 2003, the City of Louisville and Jefferson County governments merged and the "Jefferson County Air Pollution Control District" was renamed the "Louisville Metro Air Pollution Control District." See The History of Air Pollution Control in Louisville, available at <https://louisvilleky.gov/government/air-pollution-control-district/history-air-pollution-control-louisville>. However, each of the regulations in the Jefferson County portion of the Kentucky SIP still has the subheading "Air Pollution Control District of Jefferson County." Thus, to be consistent with the terminology used in the SIP, we refer throughout this notice to regulations contained in the Jefferson County portion of the Kentucky SIP as the "Jefferson County" regulations.

<sup>2</sup> EPA notes that the Agency received several submittals revising the Jefferson County portion of the Kentucky SIP transmitted with the same September 5, 2019, cover letter. EPA will be considering action for these other SIP revisions in separate rulemakings.

alter the meaning of the regulation such as clarifying changes to its notification requirements under the SIP. In addition, other changes strengthen the SIP by adding a specific reporting requirement to communicate results from any required performance testing. The SIP revision updates the current SIP-approved version of Regulation 1.04 (Version 6) to Version 7. The changes to this rule and EPA's rationale for proposing approval are described in more detail in Section II of this notice of proposed rulemaking.

## **II. EPA's Analysis of the Commonwealth's Submittal**

As mentioned in Section I of this proposed action, the September 5, 2019, SIP revision that EPA is proposing to approve makes changes to Jefferson County Air Quality Regulations at Regulation 1.04, *Performance Tests*. The changes to Section 2, *Test Requirements*, makes several ministerial language changes throughout to include "the Administrator of the EPA" in place of "EPA"<sup>3</sup> and similar minor edits which do not alter the meaning of the regulation. As approved into the SIP before this revision, EPA has a role in approving alternative testing procedures, including changes in methodology or equivalent methods for use. In some instances, the Administrator of the EPA is now included where the provision only referred previously to the District. Specifically, the changes clarify that that EPA has the authority to require or conduct performance testing in addition to the District. Section 2 is then modified to move a noticing requirement ahead of starting testing to Section 3, *Testing Notification*, to streamline the regulation. This change also results in renumbering of the remainder of Section 2.

Section 2 is also modified with additional language under 2.10 to describe the limited

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<sup>3</sup> EPA is proposing to approve the SIP revision with the understanding that these provisions referencing the "Administrator of the EPA" include any EPA official with the delegated authority to take the actions described in Section 2.

circumstances under which a person conducting a test may halt the test in progress. This language allows for halting the test only if: 1) there is a forced shutdown; 2) there is failure of an irreplaceable portion of the sampling train; 3) there are extreme meteorological conditions; or 4) there are unforeseen circumstances beyond the owner's or operator's control. Next, halting a test is specifically not allowed for the purpose of adjusting the parameters of the performance test. SIP-approved Section 2.11 already lists items 2.10.1 – 2.10.3 as potential causes of halting a test run. Therefore, the changes to Section 2.10 are intended to clarify when it is appropriate to halt a test run and when it is not allowed. Importantly, all data, including from halted test runs, is required to be reported in newly added Section 5. EPA proposes that these changes to Section 2 are clarifying and minor in nature.

Section 3, *Testing Notification*, is modified first by reorganizing the section. Section 3.1 is moved from former 3.1.1, and the requirement to submit an intent to test at least 25 working days ahead of the projected start of a performance test is modified to require a test protocol at least 30 calendar days ahead of the projected start. These changes are clarifying and strengthening in nature, requiring a full test protocol — which Jefferson County describes as a site-specific testing plan — rather than an intent to test. Section 3.2 is modified to note that a pre-test conference may be arranged, but is not required. This conference is no longer specifically necessary since Section 3.1 now requires further advance notice of the performance test along with a site-specific testing protocol. Section 3.2 is also changed to remove the requirement that a pre-test “survey,” which was undefined, must accompany the conference. This requirement is superseded with the requirement to submit a protocol under 3.1. Next, Section 3.3 is added to include the 10-day notification of the intent to test to the District that was

previously included in Section 2. EPA preliminarily finds these changes to Section 3 to be administrative, minor, and clarifying in nature.

Section 4, *Notification Waiver*, is modified to correct a typographical error, restructure and renumber a provision, and eliminate language which is no longer necessary. The pre-test survey previously referenced in Section 4.2 is no longer required by Section 3 and is removed accordingly from the list of items for which notification is waived in the case of an emergency or malfunction.

Finally, the September 5, 2019, SIP revision adds Section 5, *Test Report*, to provide specific instruction on submitting a final test report following the test. Section 5.1 provides that a report shall be submitted within 60 days of the completion of any performance test, and Section 5.2 provides that the report shall include all data, including any data from aborted or rejected test runs and any other specified data in the test protocol. EPA proposes that the submission of a report at the end of a performance test is appropriate for communicating the results of any required testing pursuant to Regulation 1.04, and that the inclusion of Section 5 in the SIP is SIP-strengthening.

These rule changes do not change any applicable emissions limitations or relax requirements for affected sources. EPA proposes that the changes serve to strengthen and clarify the SIP. Therefore, EPA has made the preliminary determination that the aforementioned changes will not have a negative impact on air quality in the area and is therefore proposing to approve Version 7 of Regulation 1.04 into the Jefferson County portion of the Kentucky SIP.

### **III. Incorporation by Reference**

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Jefferson County's Regulation 1.04, *Performance Tests*, Version 7, state effective June 19, 2019, which makes minor and ministerial changes for consistent language throughout the regulation and includes a new requirement for submitting reports on the conducted performances tests. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

#### **IV. Proposed Action**

EPA is proposing to approve changes to the Jefferson County portion of the Kentucky SIP included in a September 5, 2019, SIP revision. Specifically, EPA is proposing to approve the District's Regulation 1.04 Version 7 into the SIP. The September 5, 2019, SIP revision makes minor and ministerial changes for consistent language throughout the regulation and includes a new requirement for submitting reports on the conducted performances tests. EPA believes these changes are consistent with the Clean Air Act (CAA or Act), and this rule adoption will not impact the national ambient air quality standards or interfere with any other applicable requirement of the Act.

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices,

provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.



## **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference,  
Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Mary Walker,  
Regional Administrator,  
Region 4.

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